

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KENNETH TAYLOR,

Plaintiff,

vs.

CAVALIERS OPERATING CO., et al.,

Defendants.

) **Case No. 1:09 CV 0730**
)
) **JUDGE DONALD C. NUGENT**
) **MAGISTRATE JUDGE DAVID S.**
) **PERELMAN**
)
) **REPORT AND RECOMMENDED**
) **DECISION**
)
)

On July 31, 2009, this Court entered an Order (ECF No. 12) permitting the plaintiff to submit a proposed complaint "which is reflective of the June 19, 2009 ruling of Judge Nugent and which conforms with the spirit of rule 8(a)(2), which means that it shall outline the plaintiff's claims for relief without the hyperbole and argumentative averments of the initial complaint and without the exhibits and attachments hereto."

That ruling further provided:

That pleading shall be submitted under a motion for leave to file first amended complaint within twenty days hereof. If this Court finds the pleading to be in compliance with this ruling such leave will be granted, and the plaintiff will be directed to proceed to effectuate service upon the remaining defendants. If, on the other hand, this Court concludes that the pleading fails to conform with the legal boundaries established by Judge Nugent's ruling or that it is once again an overblown recitation inconsistent with Rule 8(a)(2) this Court will recommend to Judge Nugent that as a sanction leave to file that complaint be denied and the action terminated, without prejudice.

The contingency which this Court failed to address was the consequence of the plaintiff failing to submit a proposed amended complaint within the twenty day period, which is what has occurred. Nevertheless, this Court believes that it would be appropriate to order the complaint dismissed without prejudice, and that such order condition the filing of any new complaint upon this pleading being reflective of Your Honor's June 19, 2009 ruling and in compliance with Rule 8(a)(2) of the Federal Rules of Civil Procedure, and it is recommended that such an order be entered.¹

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. S. Perelman', written over a horizontal line.

David S. Perelman
United States Magistrate Judge

Signed: August 24, 2009

OBJECTIONS

Any objections to this Report and Recommended Decision must be filed with the Clerk of Courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See, also, Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

¹The defendant has moved for a twenty-day extension to answer the present complaint until after Your Honor determines whether to dismiss that complaint or to allow the plaintiff to file an amended complaint (ECF No. 15). It is recommended that this motion be granted.